

¹ 5 U.S.C. § 8101 *et seq.*

performance of duty on March 2, 2012.² He described his injuries as involving the low back, shoulder, and neck. Appellant stopped work on March 3, 2012 and returned on April 16, 2012. OWCP accepted the claim for lumbar and neck sprains.

In a report dated April 4, 2012, Dr. Charles Buttaci, an osteopath, stated that appellant continued to have back pain, but that a bigger issue was headaches. He advised that appellant would undergo a neurological examination. Appellant was seen by Dr. John Verdini, an osteopath, on April 10, 2012. Dr. Verdini stated that on focal neurological examination the history was most consistent with a cervical strain injury with subsequent cervicogenic headaches. He stated that appellant's symptoms were improving and his prognosis for full recovery was excellent.

Dr. Buttaci indicated that appellant could return to full duty as of April 16, 2012. He stated in a May 3, 2012 report that appellant may have sustained a concussion in the March 2, 2012 motor vehicle accident. On May 7, 2012 OWCP accepted that appellant sustained a concussion in the March 2, 2012 motor vehicle accident.

Appellant received treatment from Dr. Sheldon Staunton, a Board-certified neurologist. In a report dated July 30, 2012, Dr. Staunton stated that appellant was working, but complained about memory loss. He provided results on examination and stated that there was no doubt that appellant "did have a concussion or maybe two of them while at work." According to Dr. Staunton, the type of memory loss described by appellant did not seem to be objective or physiologic. He indicated that additional testing would be needed. Dr. Staunton reported on October 3, 2012 that appellant's neurological examination was normal. He stated that appellant probably has some postconcussion headaches, but Dr. Staunton could not understand the persistent memory problem.

In a report dated December 5, 2012, Dr. Michael Long, a psychologist, provided results of a neuropsychological evaluation on November 30, 2012. He stated that appellant presented with post-traumatic stress disorder (PTSD) which seemed compounded by "prominent reactive distress in his work environment." Dr. Long referred to anxiety that was exacerbated by continued mail delivery and reported stressors at work. He stated that appellant described a perceived harassment at work regarding his cognitive and emotional difficulties.

Dr. Staunton submitted a brief report dated December 6, 2012, noting that testing by Dr. Long revealed "a great deal of anxiety and depression, which appears to be completely the result of the injuries that [appellant] sustained while working." He stated that there was no evidence of previous problems, and it was his opinion that the cause of appellant's problems was the injuries sustained at work.

By report dated January 17, 2013, Dr. Staunton reported that appellant had been involved in a motor vehicle accident in November 2011, as well as the March 2, 2012 motor vehicle accident. He stated that the accident was similar and appellant was "knocked about within the confines of the seatbelt." According to Dr. Staunton, appellant was totally disabled due to

² Appellant also had a claim for injury resulting from a motor vehicle accident on November 12, 2011. This claim was accepted for lumbar and cervical sprains.

depression and needed therapy. He reported that appellant was under a great deal of stress due to the financial difficulties imposed on him by the injury he sustained.

Appellant submitted a claim for a recurrence of disability (Form CA-2a) commencing February 16, 2013. He stated that he frequently had headaches and confusion. In a narrative statement, appellant stated that he had returned to work April 16, 2012, but continued to have headaches and feel tired. He stated that he sometimes would forget instructions from his supervisor and appellant would get frustrated by his inability to do things as he had done in the past.

With respect to medical evidence, appellant submitted brief reports dated March 7 and 22, 2013 from Dr. Claudine Lochard, a psychologist, who indicated that appellant appeared depressed. He also submitted a report dated April 10, 2013 from Dr. Staunton, who provided results on examination and reported that appellant's headaches were better. Dr. Staunton stated that appellant had two concussions, with a postconcussion syndrome and severe depression.

By decision dated May 24, 2013, OWCP denied the claim for a recurrence of disability commencing February 16, 2013. It found that the medical evidence was insufficient to establish the claim.

On May 15, 2014 appellant, through his representative, requested reconsideration. He submitted a February 20, 2014 report from Dr. Long, who stated there were only modest changes in appellant's cognitive status since the last evaluation. In a March 1, 2014 addendum report, Dr. Long stated that appellant had sustained whiplash-type soft tissue injuries, PTSD, and probable cerebral concussion in the March 2, 2012 motor vehicle accident. He stated that appellant's condition had worsened as a result of increasing psychiatric disturbances. Dr. Long stated that appellant was "perceived as disabled" on November 30, 2012, although appellant did not stop work until February 15, 2013. According to Dr. Long, appellant's continuing to work was detrimental to his recovery and any attempt at returning to work would require significant accommodations.

In a report dated April 16, 2014, Dr. Konstantin Timofeev, a Board-certified neurologist, stated that appellant related that his symptoms mainly began after his second motor vehicle accident in March 2012. He stated that appellant was last seen on March 17, 2014 and his cognitive state was pretty much unchanged and showed significant deficit, along with anxiety and depression. Dr. Timofeev stated that appellant's cognitive impairment definitely deteriorated after his second motor vehicle accident. He reported that appellant had PTSD and was disabled, stating that the psychological component in appellant's complaints needed to be addressed, more than the neurological complaints.

Appellant also submitted an April 28, 2014 report from Dr. Margaret Walker, a psychologist, who stated that she had treated him since September 20, 2013 for anxiety and depressive symptoms. Dr. Walker reported that he continued to have headaches, fatigue, forgetfulness, periodic irritability, and cognitive impairment. She stated that appellant was totally disabled. According to Dr. Walker, it was noteworthy that he had two motor vehicle accidents in November 2011 and March 2012.

By decision dated January 26, 2015, OWCP reviewed the merits of the recurrence claim. It found the medical evidence was insufficient to warrant modification.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening or new exposure to the work environment that caused the illness.³

An employee who claims a recurrence of disability due to an accepted employment injury has the burden of proof to establish by the weight of substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁴ Where no such rationale is present, medical evidence is of diminished value.⁵

ANALYSIS

In the present case, appellant has alleged that he sustained a recurrence of disability commencing February 16, 2013, casually related to his March 2, 2012 employment injury. The accepted conditions in the case are lumbar and cervical sprains, and a concussion. To establish the claim, the medical evidence must document an employment-related condition that disabled appellant from performing his letter carrier position as of February 16, 2013. The Board has reviewed the medical evidence of record and finds that it is not sufficient to meet appellant's burden of proof.

Dr. Staunton opined in a January 17, 2013 report that appellant was disabled at that time due to depression. In his previous report dated December 6, 2012, he had referred to Dr. Long's evaluation and stated that appellant's anxiety and depression were the result of the "the injuries" sustained at work. The diagnosed conditions of anxiety and depression have not been accepted, and the evidence does not contain an opinion with sound medical reasoning establishing the conditions as causally related to the March 2, 2012 motor vehicle accident. Dr. Staunton does not explain how the diagnosed psychiatric conditions are related to the employment incident. If the concussion sustained on March 2, 2012 led to a consequential depression, then there must be a clear explanation as to how the condition was the direct and natural result of the employment injury.⁶ A claimant bears the burden of proof to establish a claim for a consequential injury, and

³ 20 C.F.R. § 10.5(x); *R.S.*, 58 ECAB 362 (2007).

⁴ *I.J.*, 59 ECAB 408 (2008); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁵ *See Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁶ *See A. Larson, The Law of Workers' Compensation* § 10.01 (November 2000). The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.

must submit medical evidence on causal relationship supported by sound medical reasoning.⁷ Dr. Walker noted she treated appellant for anxiety and depression, but did not provide a rationalized medical opinion relating those conditions to the employment injury.

Dr. Long and Dr. Timofeev provided a diagnosis of PTSD, which again is not an accepted condition. According to Dr. Long, appellant's condition was exacerbated by continuing to work and other stressors at work.

The physicians of record also refer to appellant having cognitive difficulties, and Dr. Staunton noted a diagnosis of postconcussion syndrome, but again there is no medical evidence of record that provides a complete background and clearly explains how these symptoms resulted from the March 2, 2012 employment injury. Dr. Staunton, for example, indicated in his July 30 and October 3, 2012 reports that he did not really understand what was causing appellant's memory problems.

In addition, the medical evidence of record does not discuss the claimed disability commencing February 16, 2013. Dr. Long referred to a "perceived disability" as of November 30, 2012, without explaining why appellant continued to work and why appellant was unable to perform job duties as of February 16, 2013. Dr. Staunton, Dr. Walker, Dr. Timofeev, nor any other physician of record discussed a work stoppage as of February 16, 2013.

The Board accordingly finds that OWCP properly denied the claim for a recurrence of disability commencing February 16, 2013. The medical evidence of record does not include a report that provides a complete and accurate history, and a rationalized medical opinion that establishes that appellant was disabled as of February 16, 2013 due to a condition causally related to the March 2, 2012 motor vehicle accident. It is appellant's burden of proof, and he did not meet his burden in this case.

On appeal, appellant argues that the medical evidence supports the claim for a recurrence of disability. He argues that OWCP did not properly consider the reports of Dr. Timofeev and Dr. Walker. The Board has reviewed all of the medical evidence before OWCP at the time of the January 26, 2015 merit decision on appeal. For the reasons noted above, the Board finds the medical evidence is not sufficient to establish a recurrence of disability commencing February 16, 2013.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish a recurrence of disability commencing February 16, 2013.

⁷ J.A., Docket No. 12-0603 (issued October 10, 2012).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 26, 2015 is affirmed.

Issued: July 10, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board